IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1450 OF 2007

Nazim Nasir Shaikh. ..Petitioner.
Vs.
State of Maharashtra. ..Respondent.

Mr.S.K.Shinde i/by Sagar Kasar for the Petitioner.
Mr.A.S.Shitole, APP. for the State.

CORAM : B.H.MARLAPALLE,J.
DATE : 23rd October, 2007.

P.C.

1. Heard Mr. Shinde, the learned counsel for the petitioner who is representing the petitioner-accused No.5 in C.R.No.105/2005 registered by Niphad Police Station under Section-392 read with 34 of the Indian Penal Code and under Section-3 and 25 of the Arms Act. This crime was initially registered against the unknown persons in respect of the incident that had taken place on 22.8.2005. On investigation, the police have submitted charge-sheet and now the case is numbered as RCC No.54/2006 by the learned Judicial Magistrate First Class at Niphad. The petitioner filed an application under Section 239 of the Cr.P.C. (Exh.168) before the learned Magistrate and prayed for discharge. The learned Judicial Magistrate First Class rejected the said application on 2.4.2007 and therefore, the applicant challenged the said order in Criminal Revision Application No.33 of 2007 which also came to be

dismissed by the learned Ad-hoc Additional Sessions Judge vide his Judgment and Order dated 22.6.2007. Hence, this petition under Article-227 of the Constitution of India.

2. A copy of the charge sheet has been placed on record. It indicates that there are in all 12 accused and 78 witnesses to the incident. The petitioner accused No.5 is the son of one of the police officers. The said charge sheet has been filed for the offences punishable under Sections-392, 120B, 114, 201, 411, 494 read with 34 of the I.P.C. and under Section 3 and 25 of the Arms Act. As per the charge sheet the accused Nos. 1 to 3 had committed an act of robbery, accused Nos. 4 to 8 were involved in the disposal of the stolen property and the accused Nos. 9 to 12 had supplied arms illegally to the accused No.1. Both the courts below examined the record and held that there is prima facie material available for the trial of the accused and it is for the prosecution to prove the charge. The Revisional Court recorded a prima facie opinion that the evidence against the accused No.5 indicated recovery of amount of Rs.2500/- on 3.11.2005 and also found in the company of the other accused during the raid. The courts below have also held that immediately after the occurrence of the incident, the petitioner- accused had met one Sachin Javeri and discussed about rounds of

revolver.

3. The view taken by the courts below cannot be said to be perverse or manifestly erroneous in rejecting the petitioner's application for discharge. Mr. Shinde, the learned counsel for the petitioner submits that the evidence sought to be relied and submitted alongwith the charge sheet does not indicate any involvement of the present petitioner and therefore, the petitioner was required to be discharged. In support of his contentions, he also placed reliance on the decision of this court in the case of Laxmi Koli Babita Vs.State of Maharashtra reported in 2005 ALL MR (Cri.) 571 and in the case of Babu @ Kalya Thomas Fernandes Vs.State of Maharashtra reported in 2003 ALL MR (Cri.) 248. The facts of both these cases cannot be compared with the facts of the present case and I am satisfied that a triable case has been made out in the charge-sheet against the petitioner.

3. Hence, petition is rejected summarily.

4. Trial is expedited.

(B.H.MARLAPALLE, J.)